IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
COBALT INTERNATIONAL ENERGY, INC., *et al.*,[1]	)	Case No. 17-36709 (MI)
Debtors.	)	(Jointly Administered)

DEBTORS' OMNIBUS REPLY TO OBJECTIONS TO DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT, (II) APPROVING THE SOLICITATION AND NOTICE PROCEDURES WITH RESPECT TO CONFIRMATION OF THE DEBTORS' PROPOSED JOINT CHAPTER 11 PLAN, (III) APPROVING THE FORMS OF BALLOTS AND NOTICES IN CONNECTION THEREWITH, (IV) SCHEDULING CERTAIN DATES WITH RESPECT THERETO, AND (V) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "Debtors") file this reply (this "Reply") to the objections filed to the *Debtors' Motion for Entry of an Order (I) Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Debtors' Proposed Joint Chapter 11 Plan, (III) Approving the Forms of Ballots and Notices in Connection Therewith, (IV) Scheduling Certain Dates with Respect Thereto, and (V) Granting Related Relief* [Docket No. 275] (the "Disclosure Statement Motion").[2] In support of this Reply and in further support of approval of the Disclosure Statement and entry of the Order, the Debtors respectfully state as follows.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Cobalt International Energy, Inc. (1169); Cobalt International Energy GP, LLC (7374); Cobalt International Energy, L.P. (2411); Cobalt GOM LLC (7188); Cobalt GOM # 1 LLC (7262); and Cobalt GOM # 2 LLC (7316). The Debtors' service address is: 920 Memorial City Way, Suite 100, Houston, Texas 77024.

[2] On January 23, 2018, the Debtors filed the *Joint Chapter 11 Plan of Cobalt International Energy, Inc. and Its Debtor Affiliates* [Docket No. 273] (as amended, supplemented, or otherwise modified from time to time, the "Plan"), and the *Disclosure Statement for the Joint Chapter 11 Plan of Cobalt International Energy, Inc. and Its Debtor Affiliates* [Docket No. 274] (as amended, supplemented, or otherwise modified from time to time, the "Disclosure Statement"). On February 19, 2018, the Debtors amended the Plan [Docket No. 429] and the Disclosure Statement [Docket No. 430]. On February 21, 2018, the Debtors further amended the Plan [Docket No. 462] and the Disclosure Statement [Docket No. 464]. Capitalized terms used but not defined herein shall

Preliminary Statement

1. On February 20, 2018, the Debtors filed an emergency motion to continue the disclosure statement hearing until March 8, 2018, and to shorten the notice and solicitation periods associated with confirmation. The Debtors intend to utilize this additional time to continue ongoing settlement discussions with creditors and other parties in interest regarding the Plan. Although there is no certainty that the Debtors will be able to resolve all outstanding disputes, the Debtors are hopeful of building consensus; at a minimum, the continuance will allow the Debtors to add to the Disclosure Statement information regarding the outcome of the auction and projected creditor recoveries. If, however, the Court does not grant the continuance and shortened notice, the Debtors are prepared to move forward with approval of their Disclosure Statement, which provides all the required information under the Bankruptcy Code.

2. The Disclosure Statement already includes a wealth of relevant information. (It is over 50 pages long.) The Debtors describe the chapter 11 cases and various aspects of the Plan that will affect all classes of claims and interests. Getting this information into the hands of the voting classes is imperative to the Debtors' chapter 11 process. The issues raised by the objecting parties that truly relate to disclosure seek information that is not currently available and ignore the procedures included in the Disclosure Statement for providing such information. As made clear in the Disclosure Statement itself, the Debtors will supplement the Disclosure Statement with additional information regarding the results of the auction and projected creditor recoveries when information is available and still 17 days prior to the proposed voting deadline of March 26, 2018.

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have the meanings ascribed to them as set forth in the Disclosure Statement Motion, the Disclosure Statement, or the Plan, as applicable.

3. The Supplement and the enhanced disclosures contained in the Disclosure Statement should address all disclosure-related objections. Indeed, the Debtors have engaged approximately 10 parties in interest regarding formal and informal responses and believe that they have reached consensual resolution with most of the parties. The Debtors have worked diligently to try to address each such objection to the extent practicable. And, with the additional time afforded by the requested continuance, the Debtors will continue to work toward consensual resolution of the Disclosure Statement objections and all other disputes prior to the Court's hearing on the Disclosure Statement Motion and may file a further amended Plan and Disclosure Statement to the extent necessary to resolve objections or memorialize any settlement reached in these cases.

4. Certain objections raise issues that are not properly considered at a hearing on the Disclosure Statement. For example, objections regarding the proposed release, exculpation, and injunction provisions in the Plan are confirmation issues that should be addressed at confirmation. Section 1125 of the Bankruptcy Code sets forth a targeted focus for approval of a Disclosure Statement: "adequate information." Section 1129 of the Bankruptcy Code, on the other hand, requires that the Court make a number of affirmative findings to support confirmation of a chapter 11 plan. Section 1125's adequate information standard is not intended to be onerous—it only requires that a debtor provide enough information for voting parties to make an informed judgment when deciding whether to accept or reject a chapter 11 plan. Section 1129's confirmation standards, on the other hand, require a debtor to carry a substantial evidentiary burden. The reason for this difference is self-evident—unlike a chapter 11 plan, a disclosure statement is not an operative document; its purpose is to provide information so that parties in interest entitled to vote may do so in an informed manner. Put another way, a disclosure statement does not affect parties' substantive rights.

5. The objecting parties seek to improperly expand the scope of the Court's inquiry beyond adequate information, predominantly raising confirmation issues not yet ripe. The objecting parties are free to press such objections at the appropriate time, but now is not that time. To succeed on a confirmation-related objection at this stage in the chapter 11 cases, the objecting parties must demonstrate that the Plan is patently unconfirmable—i.e., that confirmation of the Plan is ***impossible***. The objecting parties have not made—and cannot make—such a showing. Far from impossible, there is ample reason to think that confirmation of the Plan is ***probable***, even over parties' objections. (That said, the Debtors continue to believe a ***consensual*** confirmation of the Plan may be achievable with additional time to discuss disputed issues before commencing solicitation.) Accordingly, the Court should decline to consider the objecting parties' confirmation objections at this stage, and, if it declines to grant the Debtors' requested continuance, approve the Disclosure Statement to permit these cases to proceed to confirmation.

6. As explained more fully below, the Disclosure Statement addresses all of the disclosure-related objections and otherwise contains adequate information to satisfy the requirements of section 1125 of the Bankruptcy Code. The remaining objections are either plan confirmation objections not properly considered in the context of a disclosure statement hearing or should be overruled for the reasons set forth herein. Accordingly, the Motion should be granted, and the Disclosure Statement should be approved.

Background

7. Various parties filed objections to the Disclosure Statement.[3] A detailed summary of the objections and the Debtors' proposed resolutions or specific responses to each is attached hereto as **Exhibit A**.

[3] *See, e.g.*, Chevron U.S.A. Inc. ("Chevron") [Docket No. 439]; the ad hoc committee of unsecured noteholders (the "Unsecured Noteholders") [Docket No. 442]; Whitton Petroleum Services Limited ("Whitton") [Docket No.

8. The objections have no merit and offer no compelling reason for the Court to deny approval of the Disclosure Statement. The Debtors respectfully request that the Court overrule the objections and approve the Motion.

Argument

I. The Disclosure Statement Provides Adequate Information.

9. Pursuant to section 1125 of the Bankruptcy Code, the proponent of a chapter 11 plan must provide holders of impaired claims and interests entitled to vote on a plan with "adequate information" regarding the plan. *See In re U.S. Brass Corp.*, 194 B.R. 420, 423 (Bankr. E.D. Tex. 1996) ("The purpose of the disclosure statement is . . . to provide enough information to interested persons so they may make an informed choice."); *In re ISC Bldg. Materials, Inc.*, No. 10-35732, 2011 Bankr. LEXIS 2036, at *12 (Bankr. S.D. Tex. Feb. 10, 2011) ("The primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan."); *In re Applegate Prop., Ltd.*, 133 B.R. 827, 831 (Bankr. W.D. Tex. 1991) ("A court's legitimate concern under Section 1125 is assuring that hypothetical reasonable investors receive such information as will enable them to evaluate for ***themselves*** what impact the information might have on their claims and on the outcome of the case.") (emphasis in original). Whether a disclosure statement is "adequate is decided on a case by case basis and is left largely to the discretion of the bankruptcy court." *In re Texas Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988); *see also Mabey v. Southwestern Elec. Power Co. (In re Cajun Elec. Power Coop., Inc.)*, 150 F.3d 503, 518 (5th Cir. 1998) ("The legislative history of § 1125 indicates that, in determining what constitutes

443]; the U.S. Trustee [Docket No. 444]; Anadarko Petroleum Corporation and Anadarko US Offshore LLC (collectively, "Anadarko") [Docket No. 445]; the United States, on behalf of the United States Department of the Interior (the "Interior") [Docket No. 446]; the office committee of unsecured creditors (the "Committee") [Docket No. 450]; and certain plaintiffs in the Debtors' Securities Action (the "Securities Plaintiffs"). In addition to the objections listed, Wilmington Trust, N.A., as First Lien Indenture Trustee, filed a reservation of rights [Docket No. 455].

adequate information with respect to a particular disclosure statement . . . the kind and form of information are left essentially to the judicial discretion of the court and that ***the information required will necessarily be governed by the circumstances of the case***." (emphasis added) (internal citations omitted)).

10. Section 1125(a)(1) of the Bankruptcy Code defines "adequate information" as:

> information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan.

In applying section 1125 of the Bankruptcy Code, courts have identified various categories of information that generally support a finding that a disclosure statement contains adequate information. *See, e.g.*, *U.S. Brass Corp.*, 194 B.R. at 424–25 (listing categories of information); *In re Westland Dev. Corp. v. MCorp Mgmt. Solutions., Inc*., 157 B.R. 100, 102 (S.D. Tex 1993) (same); *In re Metrocraft Pub. Servs, Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984) (same). The factors examined by the court in *U.S. Bass Corp.* include, among other factors, the following: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the source of information stated in the disclosure statement; (4) a disclaimer; (5) the present condition of the debtor while in Chapter 11; (6) the scheduled claims; (7) the estimated return to creditors under a Chapter 7 liquidation; (8) the future management of the debtor; (9) the Chapter 11 plan or a summary thereof; (10) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (11) information relevant to the risks posed to creditors under the plan; (12) litigation likely to arise in a nonbankruptcy context; (13) tax attributes of the debtor; and (14) the relationship of the

debtor with the affiliates. *U.S. Brass Corp.*, 194 B.R. at 424–25 (citing *Metrocraft*, 39 B.R. at 568). Courts acknowledge, however, that these factors are merely guideposts and are not necessarily required to find that a disclosure statement contains adequate information. *Id.* ("Disclosure of all factors is not necessary in every case."); *see also Oneida Motor Freight, Inv. v. United Jersey Bank (In re Oneida Motor Freight, Inc.)*, 848 F.2d 414, 417 (3d Cir. 1988) ("From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case."); *In re Cardinal Congregate I*, 121 B.R. 760, 765 (Bankr. S.D. Ohio 1990) (stating that the list of factors are "but a yardstick against which the adequacy of disclosure may be measured"); *In re Phoenix Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) ("[I]t is . . . well understood that certain categories of information which may be necessary in one case may be omitted in another; no one list of categories will apply in every case.").

11. As demonstrated in the table below, the Disclosure Statement contains the information necessary for creditors to make an informed decision with respect to accepting or rejecting the Plan, including:

Category	Location in the Disclosure Statement
Events which led to Chapter 11	Section VII
Description of the available assets and their value	Section VII.C, Supplement
Implementation of the Plan	Section IV
Source of information stated in the disclosure statement	Sources of information are cited throughout the Disclosure Statement
Disclaimer indicated that no statement or information concerning the Debtors or securities are authorized, other than those set forth in the Disclosure Statement	Introduction
Present condition of the debtor while in Chapter 11	Sections II, VIII
Information regarding claims against the Estates	Section IV

Estimated return to creditors under a Chapter 7 liquidation	Supplement
Reorganized Debtors' management	Not Applicable, Section IV. F
Plan Summary	Section IV
Financial information, data, valuations, or projections relevant to the creditors' decision to accept or reject the Plan	Section III.D, Supplement
Information relevant to the risks posed to creditors under the Plan	Section IX
Litigation likely to arise in a non-bankruptcy context	Sections VII.C, IX
Tax attributes of the debtor	Section XI
The relationship of the debtor with the affiliates	Section VI.C

12. Ultimately, "a disclosure statement must be meaningful to be understood . . . by overburdening a proponent's disclosure statement with information significant and meaningful to lawyers alone may result ultimately in reducing the disclosure statement to an overlong incomprehensible, ineffective collection of words to those whose interests are to be served by disclosure." *Stanley Hotel*, 13 B.R. at 933–34 ("Thus, compounding a disclosure statement for the sake of a lawyer's notion of completeness, or because some additional information might enhance one's understanding, may not always be necessary or desirable, and the length of a document should not be the test of its effectiveness."); *see also In re Applegate Prop., Ltd.*, 133 B,R, 827, 829–30 (Bankr. W.D. Tex. 1991) ("[A] disclosure statement need not meet the extensive disclosure requirements of the securities laws for registration statements and the like."); *In re Waterville Timeshare Grp.*, 67 B.R. 412, 413 (Bankr. D.N.H. 1986) ("overly technical and extremely numerous additions to a disclosure statement suggested by an objecting party may themselves be self-defeating in terms of the resulting clarity and understandability of the document to the average investor").

13. The Disclosure Statement contains all the information necessary for it to be meaningfully understood by parties entitled to vote on the Plan. In other words, the Disclosure Statement makes sense, is fair, and advises parties-in-interest of what is about to happen to them as required by this Court. Indeed, the Debtors have strived to include ***all*** relevant and available information in the Disclosure Statement to ensure that creditors are adequately informed. *In re Walker*, 198 B.R. 476, 479 (Bankr. E.D. Va. 1996) (In evaluating the sufficiency of a disclosure statement, "[a] debtor cannot be expected to unerringly predict the future, but rather must provide information on all factors ***known to him at the time*** that bear upon the success or failure of the proposals set forth in the plan." (emphasis added)). The only information lacking from the Disclosure Statement is information that is currently unknown, and the Disclosure Statement provides clear procedures that the Debtors will follow to provide that information to the voting classes.

14. Further, certain requests by the objecting parties for additions to the Disclosure Statement are either unnecessary or only further complicate the Disclosure Statement. For example, Whitton objects to the adequacy of the information with regard to intercompany claims. The Disclosure Statement makes clear that no cash distributions will be made on account of intercompany claims. The Debtors or the Plan Administrator, on the other hand, may account for allowed intercompany claims when making distributions to other third-party creditors. Further, as Whitton acknowledges in its objection, the Debtors' schedule of assets and liabilities includes a description of the intercompany claims, including their amounts and priorities. *See* Whitton Obj. ¶ 12. The Debtors added such references and others relating to the intercompany claims and how they may be challenged. The Debtors submit any additional information regarding the intercompany claims may be counterproductive for Disclosure Statement purposes.

15. Other requests by objecting parties are simply not relevant to a section 1125 adequate information review. For example, the Securities Plaintiffs—who by their own admission are not even voting creditors[4]—suggest the Disclosure Statement is inadequate because the Debtors have not described (a) what evidence preservation measures will ensure the plaintiffs can access the Debtors' information even after they are dismissed from the securities litigation (Securities Plaintiffs Obj., ¶¶ 32−35), or (b) how such plaintiffs will recover against the Debtors insurers notwithstanding the treatment (i.e., no recoveries) for Section 510(b) Claims under the Plan (Securities Plaintiffs Obj., ¶ 36). At best, these are Plan or confirmation order issues. But in no scenario would such information be material to creditors deciding whether to vote to accept or reject the Plan.

16. For all of these reasons, the Disclosure Statement provides creditors with "adequate information," as defined in section 1125(a)(1) of the Bankruptcy Code, to allow creditors to make an informed judgment as to whether to vote to accept or reject the plan notwithstanding assertions to the contrary by the objecting parties.

A. The Debtors Adequately Describe the Releases and Basis Thereof.

17. Certain objecting parties, including U.S. Trustee, the Securities Plaintiffs, and the Committee, object to the adequacy of the information with regard to the Debtors' releases. The Debtors have carried their burden with regard to information in support of the releases. Indeed, the Debtors provide an in-depth disclosure regarding the investigation into estate claims and causes of action. As set forth in the Disclosure Statement, the Debtors have investigated the potential estate claims and causes of action and have concluded that there is no merit to pursuing these

[4] *See In re Texas Rangers Baseball Partners*, 521 B.R. 134, 176 (Bankr. N.D. Tex. 2014) ("[A] disclosure statement is an informational document generally regarded as being intended to provide those who are entitled to ***vote*** on a plan with sufficient information to make an informed decision.") (emphasis in original).

potential claims. Parties seeking to challenge the merits of these claims or the Debtors' releases may seek discovery and object to these releases at confirmation.

18. This information is more than adequate. Moreover, the characterization and propriety of the Plan's release provisions are not disclosure issues, and the objecting parties will have ample opportunity to prosecute any confirmation objections in connection with the confirmation hearing.

B. The Debtors Will Distribute a Disclosure Statement Supplement with Ample Time Prior to the Voting Deadline.

19. To the extent the objections are to the adequacy of information related to the creditor recoveries, the objections should be overruled. As described in the Disclosure Statement, on or before March 9, 2018, or as soon as reasonably practicable following the auction, the Debtors will provide a supplement to the Disclosure Statement (the "Supplement") that provides (a) a description of the bids received and/or the successful bid, as applicable; (b) a chart detailing the projected creditor recoveries following the auction, which is scheduled for March 6, 2018; (c) a liquidation analysis; and (d) any other information the Debtors deem material to the creditors' decision to vote to accept or reject the Plan. Assuming the Supplement is distributed on March 9, 2018, the creditors would have approximately 17 days before the Voting Deadline (i.e., March 26, 2018) to review the Supplement and cast their vote to accept or reject the Plan. Disclosure of projected recoveries based on preliminary expressions of interest could have a chilling effect on the sale process and/or materially misinform stakeholders. Accordingly, any objection based on the lack of recovery information in the Disclosure Statement should be overruled because the creditors will be provided with such information well in advance of the Voting Deadline.

C. The Debtors' Disclosure Modifications Address the Objections.

20. As reflected in the Disclosure Statement, the Debtors made numerous changes to the Disclosure Statement based on constructive dialogue with various stakeholders. These modifications resolved both formal and informal issues regarding the adequacy of the Disclosure Statement. The Debtors believe the additional disclosures incorporated into the Disclosure Statement resolve most of the objections. For example, the Debtors amended the Disclosure Statement and solicitation procedures to include:

- the Supplement, pursuant to which the Debtors will provide parties in interest with projected creditor recoveries following the auction;
- additional disclosure regarding the Committee's investigation into certain claims and causes of action;
- additional disclosure regarding the Debtors' investigation into certain claims and causes of action;
- electronic delivery of ballots for Class 5 and Class 6 voting creditors;
- additional opportunities for non-voting creditors to opt out of the third-party release;
- additional disclosure regarding the first lien indenture trustee's position in respect of the treatment of first lien notes claims;
- additional disclosure regarding the Sonangol settlement and related procedures;
- additional disclosure pertaining to the United States and the Department of the Interior; and
- additional disclosure with respect to the Intercompany Claims.

The Debtors continue to engage their stakeholders to address ongoing concerns.

II. The Objecting Parties Cannot Show that the Plan Is Unconfirmable.

21. Certain objecting parties contend that the Court should not approve the Disclosure Statement because it describes a plan of reorganization that is "not confirmable as a matter of law." It is well established that, unless "the disclosure statement describes a plan that is so fatally flawed

that confirmation is ***impossible***" (i.e., the plan is patently unconfirmable), the Court should approve a disclosure statement that otherwise adequately describes the chapter 11 plan at issue. *U.S. Brass Corp.*, 194 B.R. at 422 (emphasis added); *Cardinal Congregate I*, 121 B.R. at 764 (review of issues affecting confirmation of the plan is permitted only if the proposed plan is "patently" or "facially" unconfirmable); *see also In re Unichem Corp.*, 72 B.R. 95, 98 (Bankr. N.D. Ill. 1987) (Courts should disapprove of the adequacy of a disclosure statement on confirmability grounds only "where it is readily apparent that the plan accompanying the disclosure statement could never legally be confirmed.").

22. The Debtors agree that the Plan must comply with the confirmation requirements set forth in section 1129 (as well as other applicable provisions) of the Bankruptcy Code, and are prepared to demonstrate as much. But the appropriate time to test such compliance is at the confirmation hearing. Indeed, courts emphasize that objections related to compliance with section 1129 of the Bankruptcy Code do ***not*** rise to the level of making a plan "patently unconfirmable." *See, e.g.*, *Cardinal Congregate I*, 121 B.R. at 763-64 (overruling objections to classification and treatment of claims, protection of security interests, and feasibility). Thus, issues bearing on classification, class treatment, releases, and section 1129's other requirements are not properly raised in opposition to the Disclosure Statement. *In re Ellipso, Inc.*, No. 09-00148, 2012 WL 368281, at *2 (Bankr. D.D.C. Feb. 3, 2012) (holding certain disclosure statement objections were confirmation issues "more appropriately dealt with at a confirmation hearing" including "(i) the contention that the classification of claims is improper; (ii) a claim that the Proponents do not have the means to fund the plan; (iii) an objection to the disclosure statement's admission that if [certain] claims are allowed, there will be nothing left to pay the other creditors; and (iv) allegations that the plan is being proposed in bad faith.").

23. Here, the release, exculpation, and injunction provisions contained in the Plan are consistent with chapter 11 plans that have been confirmed in this district. *See, e.g.*, *GenOn Energy, Inc.*, No. 17-33695 (DRJ) (S.D. Tex. Dec. 12, 2017); *In re Ultra Petrol. Corp.*, No. 16-32202 (MI) (Bankr. S.D. Tex. Mar. 14, 2017); *In re CJ Holding Co.*, No. 16-33590 (DRJ) (Bankr. S.D. Tex. Dec. 16, 2016); *In re Goodrich Petroleum Corp.*, No. 16-31974 (MI) (Bankr. S.D. Tex. Sept. 28, 2016); *In re SandRidge Energy*, No. 16-32488 (DRJ) (Bankr. S.D. Tex. Sept. 20, 2016); *In re Southcross Holdings LP*, No. 16-20111 (MI) (Bankr. S.D. Tex. Apr. 11, 2016). The third-party release, in particular, is consensual, and the Debtors, in consultation with several stakeholders, have agreed to enhance the avenues by which certain non-voting parties in interest may exercise their right to opt out of such releases. For the avoidance of doubt, no party in interest—other than those who consent—shall be a "Releasing Party" under the Plan. Nonetheless, the Securities Plaintiffs, who by their own declaration are opting out of the third-party release, contend that confirming the Plan is a legal impossibility because of such releases. For the reasons set forth herein, such contention is contrary to established precedent in this district and should be overruled.

III. The Solicitation Procedures Are Appropriate.

A. The Debtors Have Bolstered the Electronic Voting and Opt-Out Procedures.

24. Although the Debtors believe that their prior procedures comport with prevailing Fifth Circuit law, in the spirit of consensual resolution, the Debtors have modified their solicitation procedures to provide for: (a) electronic voting by holders of Claims in Class 5 and Class 6; (b) revised opt-out instructions for voting creditors; and (c) additional opt-out procedures for non-voting parties in interest. Further, the Debtors' voting procedures always contemplated electronic delivery for the Class 3 and Class 4 master ballots. The Debtors submit any remaining objections on account of the solicitation procedures should be overruled.

B. The Securities Plaintiffs Lack Standing to Opt Out of the Third-Party Release on Behalf of All Class Members.

25. Bankruptcy courts have ***discretion*** under Rule 9014 to apply Federal Rule of Civil Procedure 23 ("Rule 23") to bankruptcy proceedings. *See In re TWL Corp.*, 712 F.3d 886, 893 (5th Cir. 2013) ("[A]lthough Rule 23 perhaps may be applicable within the proofs of claim process, under Rule 9014, the bankruptcy court has discretion whether to authorize its application to a proof of claim."). The circumstances under which such application is appropriate, however, "are narrowly defined." *In re Sacred Heart Hosp. of Norristown*, 177 B.R. 16, 19 (Bankr. E.D. Pa. 1995). A number of courts have found that class representatives are required to file a motion under Rule 9014 requesting to make Rule 23 applicable to the bankruptcy proceedings prior to acting on behalf of the class in the claims administration and plan solicitation processes. *See In re Dynegy, Inc.*, 770 F.3d 1064 (2d Cir. 2014) (lead plaintiff was not permitted to opt out of a plan release on behalf of the class without first filing a motion under 9014 requesting to make Rule 23 applicable to the bankruptcy case); *In re Computer Learning Ctrs., Inc.*, 344 B.R. 79, 86–87 (Bankr. E.D. Va. 2006) ("The applicability of Rule 7023 is raised by motion. . . . [A] class proof of claim is not permissible without an order making Rule 7023 applicable and [] the proponent of the class proof of claim must timely obtain that order.").

26. This procedural requirement applies even if the class was already certified by another court outside of bankruptcy.[5] That is, prepetition certification is merely a ***factor*** considered by bankruptcy courts; it is not dispositive of certification in bankruptcy proceedings. *See In re TWL*, 712 F.3d at 893 ("[T]he court will consider a variety of factors relating to the bankruptcy case. These include: (1) ***whether the class was certified pre-petition***,

[5] Here, the Debtors and other defendants in the Securities Action have filed an interlocutory appeal of the class certification order, which is currently pending before the Fifth Circuit as *St. Lucie County Fire District v. Bryant*, No. 17-20503 (5th Cir. docketed Aug. 4, 2017). Briefing on the appeal is complete.

(2) whether the members of the putative class received notice of the bar date, and (3) whether class certification will adversely affect the administration of the case." (emphasis added)); *In re Ephedra Prod. Liab. Litig.*, 329 B.R. 1, 5 (S.D.N.Y. 2005) ("[B]ankruptcy significantly changes the balance of factors to be considered in determining whether to allow a class action and [] class certification may be 'less desirable in bankruptcy than in ordinary civil litigation.' . . . Even class actions that were certified prior to the filing for bankruptcy may, for this reason, be disallowed." (citations and internal quotation marks omitted)).

27. Numerous other courts analyzing this issue have agreed that "pre-filing class certification is not binding on the bankruptcy court."[6] *In re Comput. Learning Ctrs.*, 344 B.R. at 86 ("[P]re-petition certification by another court does not assure that Rule 7023 will be made applicable to the proof of claim."); *see also Reid v. White Motor Corp.*, 886 F.2d 1462, 1470–71 (6th Cir. 1989) (disallowing claim of class certified by state court pre-petition because class representative "failed to timely petition the bankruptcy court to apply the provisions of Rules 9014 and 7023."); *In re Zenith Labs., Inc.*, 104 B.R. 659, 664 (D.N.J. 1989) ("The plaintiff class has not petitioned the bankruptcy court to apply Rule 23 to this matter nor sought class certification. Clearly, there are compelling reasons for certifying the shareholder class as I concluded when I certified the class in this court on February 8, 1988. However, there may be other factors in the bankruptcy proceeding that make class certification there less compelling and

[6] The Securities Plaintiffs' reliance on this Court's decision in *In re Vanguard Natural Resources, LLC* is misplaced. *In re Vanguard Nat. Res., LLC*, No. 17-30560, 2017 WL 5573967, at *4 (Bankr. S.D. Tex. Nov. 20, 2017). While the Securities Plaintiffs cite to *Vanguard* for the proposition that "a putative class representative becomes an agent of the class once the class is certified pursuant to Rule 23," (Securities Plaintiffs Obj., ¶ 37) the *Vanguard* decision expressly found that "[a] putative representative [may] file class proofs of claim on a conditional basis until the ***presiding court certifies the class*** or rejects the class action." *Id.* (emphasis added). Further, the two-step process set forth by the Fifth Circuit in *TWL Corp.*, under which pre-petition certification is only one of three factors in the Court's Rule 23 analysis, still applies. *Id*. The *Vanguard* court ultimately denied the 9014 motion seeking to apply Bankruptcy Rule 7023 to the contested matter because it did not satisfy the *TWL Corp*. standard.

it may be possible that a different result might be appropriate."); *In re Adam Aircraft Indus., Inc.*, No. 08-11751 (MER), 2009 WL 2100929, at *7 (Bankr. D. Colo. Mar. 20, 2009) ("[P]rior class certification in the state court did not remove these requirements [under Rules 9014 and 7023], since consent to being a member of a class or a representative of a class 'in one piece of litigation is not tantamount to blanket consent to any litigation the class counsel may wish to pursue.'") (quoting *In re Standard Metals Corp.,* 817 F.2d 625, 621 (10th Cir. 1987)); *cf. In re Charter Co.*, 876 F.2d 866, 875 (11th Cir. 1989) (noting that the procedural requirements for a bankruptcy class include filing a timely motion under Rule 9014 to invoke Rule 23).

28. Here, the Securities Plaintiffs have not obtained relief from the Court to act on behalf of the class for purposes of these chapter 11 cases, including the exercise of such member's legal right to opt out of the third-party release. Just as in *Dynegy* where a class representative had been appointed but the Second Circuit nonetheless held he could not opt out of a third-party release on behalf of the class without seeking relief from the court,[7] the Securities Plaintiffs still have not met the standard set forth by the Fifth Circuit in *In re TWL*. Unless and until the Court grants such relief, the Securities Plaintiffs have no authority to bind the class members for purposes of these chapter 11 cases. Instead, individual members of the class will receive notice and the opportunity to make their own decisions and exercise their own legal rights in relation to the third-party release. The Debtors have requested information from the Securities Plaintiffs to facilitate the identification and timely notice of such class members. Meanwhile, the Debtors understand the Securities Plaintiffs will opt out of the third-party release. This approach accords with the Debtors

[7] 770 F.3d at 1071 ("In conclusion, Lucas' status as lead plaintiff of the putative class in the district court securities litigation did not automatically extend to the bankruptcy proceedings. In order to have opted out or objected on behalf of the class, Lucas first must have sought the application of Rule 23 in bankruptcy court.")

acknowledgment at the January 4 hearing that after April 20, 2018, the Securities Plaintiffs could proceed against non-Debtors in the securities litigation.

29. Because the class certification order does not automatically confer standing to the Securities Plaintiffs to act on behalf of the class members in these proceedings, they should not be entitled to bind such individuals in relation to the third-party release.

C. The Debtors Have Addressed the Bar Date Issues with Revisions to the Disclosure Statement.

30. The Committee takes issue with the fact that the Debtors' proposed voting record date is prior to the bar date. The Committee neglects to mention that the Disclosure Statement substantially accepted the Committee's suggested edits to address this issue. More specifically, the Debtors' revised solicitation procedures state in relevant part:

> Only the following holders of Claims in the Voting Classes shall be entitled to vote with regard to such Claims:
>
> . . .
>
> b. Holders of Claims who, after the Voting Record Date, but prior to March 19, 2018, have filed a Proof of Claim (i) regarding a Claim that is not listed in the Schedules or is scheduled as contingent, unliquidated, or disputed, and (ii) that has not been expunged, disallowed, disqualified, withdrawn, or superseded prior to March 19, 2018.

31. The above addition adequately protects the rights of any claimants who may file a Proof of Claim after the voting record date, but prior to the bar date. Accordingly, the Committee's objection on this point should be overruled.

D. The Debtors Will Not Include the Committee's Letter in the Solicitation Materials.

32. Based on ongoing discussions, the Debtors have incorporated a number of the Committee's comments into the Disclosure Statement. The Committee asserts now that in addition to the information the Debtors have already incorporated into the Disclosure Statement, the

Debtors also should be required to include the Committee's letter in the solicitation materials. Inclusion of the Committee's letter is neither necessary nor appropriate given the incorporated changes to the Disclosure Statement. In addition, the Committee offers no authority requiring the Debtors to acquiesce to such a request. In each case cited by the Committee, a letter was included in the solicitation materials only as part of an agreement between the parties. *See, e.g.*, *In re Boomerang Tube, LLC*, No. 15-11247 (Bankr. D. Del. 2015) Committee Obj. ¶ 43 [Docket No. 326] ("In some cases, certain aspects of disclosure statement objections may be resolved by permitting the objector to separately state its view of the proposed Plan.") and Tr. of Proceedings held August 11, 2015 at 5:17-20 (allowing inclusion of Committee letter *by agreement among the parties*) (emphasis added); *see also In re Federated Dep't Stores, Inc.*, 1992 Bankr. LEXIS 392, at *21 (Bankr. S.D. Ohio Jan. 10, 1992) ("Pursuant to the Disclosure Statement Order . . . the Debtors mailed . . . ***in certain solicitation packages***, a letter from the appropriate Creditors' Committee ***recommending a vote in favor of the Plan, in an approved form***." (emphasis added)). Here, the Debtors do not agree to include such a letter, and given the Committee's current litigation positions, including such a letter would be inappropriate.

Conclusion

33. For all the foregoing reasons, the Debtors respectfully submit that the objections should be overruled and that the Motion should be approved.

[*Remainder of page intentionally left blank.*]

Houston, Texas
Dated: February 22, 2018

/s/ Zack A. Clement

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Certificate of Service

I certify that on February 22, 2018, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Zack A. Clement
Zack A. Clement

EXHIBIT A

Objection Chart

Cobalt - Disclosure Statement Objections

Objection	Bases of Objection	Proposed Response

Chevron Objection
Objection of Chevron U.S.A. Inc. to the Debtors' Disclosure Statement for the Debtors' Joint Chapter 11 Plan [Docket No. 439]
	• Plan's third party releases cannot be approved.
	  • Parties have no opportunity to opt in or opt out of such releases.
	  • Requiring parties in interest to file objections is not equivalent to opting in or opting out.
	• The Disclosure Statement should include:
	  • information about the third-party releases and the opt-out mechanism for non-voting parties;
	  • creditor recoveries; and
	  • a liquidation analysis.
		• Any issue regarding the scope of the releases is a plan confirmation issue and the Debtors will address it in relation to the confirmation hearing. The Debtors will continue to discuss the releases with all parties in interest in advance of the confirmation hearing in an effort to reach a consensual resolution.
		• The Debtors have filed a further amended Disclosure Statement providing an opt out mechanism for voting and non-voting classes.
		• The Debtors' Disclosure Statement contains adequate information. As discussed in the Disclosure Statement, the Debtors will provide a supplement to the Disclosure Statement on or before March 9, 2018, that will include among other things, estimated creditor recoveries and a liquidation analysis.

Unsecured Noteholder Objection *Limited Objection of Ad Hoc Committee of Unsecured Noteholders to Debtors' Motion for Entry of an Order (I) Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Debtors' Proposed Joint Chapter 11 Plan, (III) Approving the Forms of Ballots and Notices in Connection Therewith, (IV) Scheduling Certain Dates with Respect Thereto, and (V) Granting Related Relief* [Docket No. 442]	• The Unsecured Noteholders will only support a sale and plan that distributes the sale proceeds if they ascribe the appropriate value to the assets. • The Disclosure Statement does not provide sufficient information for parties to make an informed judgment on the Plan. However, the Unsecured Noteholders support the Supplement as long as sufficient time is provided prior to the Voting Deadline. • The Plan is ambiguous regarding the potential treatment of any "make-whole" premium under the first lien indenture and the second lien indenture. • Third party releases are too broad to the extent that they impair the value of the causes of action against current and former directors and officers.	• The value of the assets will be determined by the court-approved sale procedures that are designed to maximize value, and the proceeds will be distributed pursuant to the terms of the Plan. • The Debtors' Disclosure Statement contains adequate information. As discussed in the Disclosure Statement, the Debtors will provide a supplement to the Disclosure Statement on or before March 9, 2018, that will provide among other things, estimated creditor recoveries and a liquidation analysis. The Ad Hoc Committee acknowledges that distribution of the Supplement on March 9, 2018, will provide their constituency sufficient time to submit ballots prior to the Voting Deadline. • As the Ad Hoc Committee acknowledges, any issue regarding any "make-whole" premiums is a plan confirmation issue and the Debtors will address it in

Objection	Bases of Objection	Proposed Response
		relation to the confirmation hearing. Further, the Debtors modified the Disclosure Statement to provide additional disclosures around the "make-whole" provisions and related risk factors associated therewith. • Any issue regarding the scope of the releases is a plan confirmation issue and the Debtors will address it in relation to the confirmation hearing. The Debtors will continue to discuss the releases with all parties in interest in advance of the confirmation hearing in an effort to reach a consensual resolution.

Whitton Objection
Whitton Petroleum Services Limited's Objection to the Debtors' Amended Disclosure Statement [Docket No. 443]
	• The Disclosure Statement should include:
	  • estimated amounts of, and recoveries for, General Unsecured Claims and Subsidiary General Unsecured Claims;
	  • the intended treatment for intercompany claims; and
	  • the nature, origin, and intended priority of intercompany claims.
		• The Debtors' Disclosure Statement contains adequate information. As discussed in the Disclosure Statement, the Debtors will provide a supplement to the Disclosure Statement on or before March 9, 2018, that will provide among other things, estimated unsecured creditor claim amounts and estimated creditor recoveries.
		
		• The amended Disclosure Statement makes clear that no distribution will be made with regard to the intercompany claims.
		
		• The Debtors added additional language to the Disclosure Statement regarding the intercompany claims. Moreover, the Debtors' disclosure information regarding the intercompany claims in their schedules of assets and liabilities. No further description of the claims is needed for a creditor to vote to accept or reject the Plan.
		
		• Nothing in the Disclosure Statement prevents a creditor from seeking to recharacterize or equitably subordinate its claims.

U.S. Trustee Objection *Objection of the United States Trustee to Debtors' Disclosure Statement for the Amended Plan and Motion for an Order*	• The solicitation and voting procedures only allow manual voting, with no provision for electronic voting. • There is no opt out provision for non-voting class	• The Debtors have revised the solicitation procedures to allow for electronic delivery of ballots by holders of Claims in Class 5 and Class 6. The Debtors' solicitation procedures always allowed for the electronic delivery of master ballots.

Objection	Bases of Objection	Proposed Response
Approving Disclosure Statement [Docket No. 444]	members. • The releases, exculpation, and injunction provisions are overly broad, and the Debtors have not provided an adequate legal justification for them. • The Disclosure Statement lacks sufficient detail such that creditors are unable to make an informed decision.	• The Debtors have filed a further amended Disclosure Statement providing an opt-out mechanism for voting and non-voting classes. • Any issue regarding the scope of the releases is a plan confirmation issue and the Debtors will address it in relation to the confirmation hearing. The Debtors will continue to discuss the releases with all parties in interest in advance of the confirmation hearing in an effort to reach a consensual resolution. • The Debtors' Disclosure Statement contains adequate information. As discussed in the Disclosure Statement, the Debtors will provide a supplement to the Disclosure Statement on or before March 9, 2018, that will provide among other things, estimated creditor recoveries and a liquidation analysis.

Anadarko Objection
Anadarko Petroleum Corporation and Anadarko US Offshore LLC's Limited Objection and Reservation of Rights with Respect to the Debtors' Motion for Entry of an Order Approving the Adequacy of the Disclosure Statement and Related Relief [Docket No. 445]
	• The Plan's third party releases cannot be approved.
	  • Non-voting classes are required to object to the releases.
	  • The Debtors seek to impose releases on parties, notwithstanding their election to opt out of the releases.
	  • The non-debtor releases are non-consensual because non-voting classes must object.
	• Unclear under what circumstances the Debtors are seeking to impose non-debtor releases on counterparties to the Debtors' executory contract on unexpired leases.
		• Any issue regarding the scope of the releases is a plan confirmation issue and the Debtors will address it in relation to the confirmation hearing.
		• The Debtors have filed a further amended Disclosure Statement providing an opt out mechanism for voting and non-voting classes.
		• If individuals want to opt out of the releases they need to either, (i) file a claim at which point the Debtors will send them a ballot which will have an opt out mechanism; or (ii) file an objection to the releases.

Department of Justice Objection
United States' Objection to the Debtors' Disclosure Statement [Docket No. 446]
	• The Disclosure Statement should include:
	  • an indication that all assignments of federal OCS leases are subject to government approval and consent;
	  • a description of the Debtors' and any assignee's continuing joint and several liability for any and all
		• The Debtors incorporated language into the Disclosure Statement the DOJ has indicated should resolve the government's objection to the Disclosure Statement.
		• Any issue regarding the scope of the releases is a plan confirmation issue and the Debtors will address it in

Objection	Bases of Objection	Proposed Response
	accrued decommissioning obligations under OCSLA, its implementing regulations, and applicable Federal Lease terms; and • a liquidation analysis. • The Plan does not comply with sections 1129 of the Bankruptcy Code. • The Plan provides a release of claims or defaults arising under any assumed executory contract, which would include the joint and several P&A obligations; • the injunction provision provides for an impermissible discharge of a liquidating corporate debtor; • the non-debtor release and exculpation provisions are impermissible under section 524(e) and *In re Pacific Lumber Co.*; and • the Plan fails to preserve the U.S.'s setoff and/or recoupment under section 553 and applicable non-bankruptcy law.	relation to the confirmation hearing. The Debtors will continue to discuss the releases with all parties in interest in advance of the confirmation hearing in an effort to reach a consensual resolution.
Committee Objection *Objection of the Official Committee of Unsecured Creditors to Debtors' Motion for Entry of an Order (I) Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Debtors' Proposed Joint Chapter 11 Plan, (III) Approving the Forms of Ballots and Notices in Connection Therewith, (IV) Scheduling Certain Dates with Respect Thereto, and (V) Granting Related Relief* [Docket No. 450]	• The Disclosure Statement fails to satisfy section 1125 of the Bankruptcy Code. • It lacks information regarding the treatment of claims and impact on creditor recoveries for general unsecured claims; a liquidation analysis; and information regarding the Debtors' entities. • The supplement will be drafted and solicited without Court oversight. • The timing of the supplement violates the notice procedures with regard to solicitation. • The Disclosure Statement does not adequately describe the releases. • The releases and the opt out procedures violates Fifth Circuit law. • The proposed voting record date is before the bar date.	• The Debtors' Disclosure Statement contains adequate information. As discussed in the Disclosure Statement, the Debtors will provide a supplement to the Disclosure Statement on or before March 9, 2018, that will provide among other things, estimated creditor recoveries and a liquidation analysis. • The Debtors have disclosed the contents of the supplement in their Disclosure Statement such that the Court can determine whether it will contain adequate information. • The Debtors adequately disclose the releases and the Debtors' investigation into the estate claims and causes of action. • Any issue regarding the scope of the releases is a plan confirmation issue and the Debtors will address it in

Objection	Bases of Objection	Proposed Response
		relation to the confirmation hearing. The Debtors will continue to discuss the releases with all parties in interest in advance of the confirmation hearing in an effort to reach a consensual resolution. • The Debtors have filed a further amended Disclosure Statement providing an opt out mechanism for voting and non-voting classes. • The Debtors have revised their solicitation procedures to allow claimants who may file a proof of claim after the voting record date, but prior to the bar date to vote.

Securities Plaintiffs Objection
Securities Plaintiffs' Objection to Approval of (I) the Disclosure Statement for the Joint Chapter 11 Plan of Cobalt International Energy, Inc. and Its Debtor Affiliates and (II) Proposed Plan Solicitation Procedures [Docket No. 452]
	• The releases are improper because they release claims of the Securities Plaintiffs and the Certified Class against the Non-Debtor Defendants.
	  • Specifically, the releases contravene the agreement reached at the January 4 hearing to resolve the Injunction Motion;
	  • the Securities Plaintiffs receive no consideration for the releases;
	  • the bankruptcy court lacks the jurisdiction and/or Article III authority to release the direct, non-bankruptcy, non-core claims asserted against the Non-Debtor Defendants in the Securities Action; and
	  • the Securities Plaintiffs' claims cannot be released or settled without District Court approval pursuant to Fed. R. Civ. P. 23(e).
	
	• The Disclosure Statement does not provide adequate information in the following respects:
	  • the current disclosure regarding the proposed releases is inadequate as they relate to the claims of the Securities Plaintiffs;
	  • the Disclosure Statement violates Bankruptcy Rule 3016(c) by failing to disclose the scope of the releases and injunctions under the Plan; and
	  • the Disclosure Statement does not discuss the
		• Any issue regarding the releases is a plan confirmation issue, and the Debtors will address it in relation to the confirmation hearing. The Debtors will continue to discuss this treatment with all parties in interest in advance of the confirmation hearing in an effort to reach a consensual resolution.
		
		• The Debtors have added an opt out form for holders of Claims and Interest in non-voting classes to opt out of the releases.
		
		• The Debtors adequately disclose the releases and the Debtors' investigation into the estate claims and causes of action.
		
		• Nothing in the Plan indicates that the Debtors or Plan Administrator, as applicable, will not retain relevant evidence. Any issues with regard to the preservation of evidence are confirmation issues.
		
		• The Securities Plaintiffs do not have the authority to opt out on behalf of a class. They have not sought an order of this Court certifying a class for purposes of these proceedings, nor have they sought authorization to represent class members in these proceedings. As such,

Objection	Bases of Objection	Proposed Response
	preservation of evidence potentially relevant to the Securities Action after the effective date of the Plan. • The Solicitation Procedures should be modified to allow the Securities Plaintiffs to opt out of the releases on behalf of the class.	the relief requested by the Securities Plaintiffs is premature at this juncture.
First Lien Indenture Trustee Reservation of Rights *Reservation of Rights of Wilmington Trust, N.A., as First Lien Indenture Trustee, With Respect to the Debtors' Disclosure Statement for the Amended Joint Chapter 11 Plan* [Docket No. 455]	• The First Lien Indenture Trustee reserves all of its rights to contest confirmation of the Amended Plan on grounds that the proposed reinstatement and redemption of the First Lien Notes.	• As the First Lien Indenture Trustee acknowledges, these issues regarding the reinstatement and redemption are plan confirmation issues, and the Debtors will address it in relation to the confirmation hearing. The Debtors will continue to discuss this treatment with all parties in interest in advance of the confirmation hearing in an effort to reach a consensual resolution.